

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3460 of 2022

Narendra Kumar Sahu

....

Petitioner

Mr. Manas Kumar Chand, Advocate

-Versus-

State of Orissa

....

Opposite Party

Mr. S.S. Mohapatra, A.S.C.

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
16.11.2022

Order No.

01.

1. Heard Mr. Manas Kumar Chand, learned counsel for the petitioner and Mr. S.S. Mohapatra, learned Additional Standing Counsel for the State.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the impugned order dated 2nd November, 2022 passed by the learned Sessions Judge, Ganjam, Berhampur in B.A. No.977 of 2022 corresponding to G.R. Case No.2061 of 2022 pending in the file of learned S.D.J.M., Behampur on the grounds stated therein.
3. On a report being lodged, Berhampur Sadar P.S. Case No.389 dated 30th August, 2022 was lodged against the petitioner under Sections 420, 272, 273, 34 IPC, Sections 20 & 24 of Cigarettes and other Tobacco Products Act, 2003 and Sections 51,

52, 53, 56, 57, 59 and 63 of Food Safety and Standards Act, 2006 was registered.

4. Mr. Chand learned counsel for the petitioner submits that petitioner was allowed interim bail by order of the learned Sessions Court for 11 days vide order dated 11th October, 2022, for 6 days vide order dated 17th October, 2022 and thereafter for about 2 weeks. It is submitted by Mr. Chand, learned counsel for the petitioner that petitioner was granted interim bail on two occasions but finally learned Sessions Court dispose of the regular bail application granting liberty to the petitioner to file a fresh bail after expiry of the interim bail period, which is by virtue of the interim order dated 2nd November, 2022, therefore there is no illegality in the impugned order. It is contended that in the case of **Satender Kumar Antil Vrs. Central Bureau of Investigation** reported in **2022(3) Crime 290(SC)**, learned Sessions Court abandoned it and disposed of the regular bail application and that too when anticipatory bail ABLAPL No.11151 of 2022 is pending consideration and the petitioner is under protection and when the co-accused is still under protection.

5. Mr. Mohapatra, learned Additional Standing Counsel for the State submits that the petitioner is at liberty to move the learned Sessions Court by filing a regular bail application as well as seeking interim order of bail and therefore the impugned order dated 2nd November, 2022 cannot be faulted with. That apart, quashing of jurisdiction has been raised by Mr. Mohapatra, learned Additional Standing Counsel for the State on the ground if at all there is disposal of regular bail, the petitioner would be at liberty to approach the court below and file regular bail under Section 439 Cr.P.C.

6. The order sheet of the learned Sessions Court is at Annexure-2 and the same is perused. Admittedly, the petitioner was granted interim bail in two phases and finally the bail application

was disposed of on 2nd November, 2022. Learned Sessions Judge has followed the course of action since the co-accused had been on interim protection in ABLAPL No.11151 of 2022, which is still pending before this Court and the decision in **Satyendra Kumar Antil** (supra) but then the impugned order dated 2nd November, 2022 was passed disposing of the regular bail, which is in a considered view of the Court should not be, inasmuch as an opportunity of sharing should be provided to the petitioner before disposing it of finally.

7. Mr. Chand, learned counsel for the petitioner submits that apart on merits of the case with regard to the offence under Sections 272, 273 IPC cites decisions in the case of **Sri Jaganath Enterprises Vrs \$1.The State of Andhra Pradesh through SHO, Pamur P.S. in Crl. P. No. 5421 of 2019** and in a batch of cases, the Court is of the view that such a question is not the subject matter of this Court and formed to dispose of a regular bail application moved before the Court such a question whether the offence of IPC are made out or not can be decided and adjudicated upon but let the petitioner charged at appropriate stage of the criminal proceeding.

8. Considering the submissions of learned counsel for the petitioner and State in view of the fact that regular bail application was disposed of should be restore to file providing opportunity to participate and claim for appropriate relief including for appropriate bail. In other words, the Court is of the view that the impugned order dated 2nd November, 2022 passed in B.A.No.977 of 2022 by the learned Sessions Judge, Berhampur, Ganjam should be interfered with and set aside the original bail application.

9. Accordingly, it is ordered

10. Consequently, the CRLMC stands disposed of with a direction that the order passed by the learned Sessions Judge, Berhampur, Ganjam is hereby set aside and original bail application

stands restored to file. The petitioner is granted liberty to approach the learned Sessions Court, Berhampur, Ganjam to surrender and apply for appropriate relief which shall be considered as per and in accordance with law keeping in view the earlier order of this Court.

(R.K. Pattanaik)
Judge

U.K.Sahoo

